

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 82 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SYNBIOTICS LTD.

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR. D.A. MEHTA, MR R.K. PATEL, MR B.D. KARIA for
MR KC PATEL for Petitioner
MR. BHARAT J. SHELAT instructed by MR BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 31/01/97

ORAL JUDGEMENT(R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad has referred for the opinion of this Court the following two

questions under Section 256(1) of the I.T. Act, 1951.

1. "Whether, on the facts and circumstances of the case, the Tribunal was justified in law in holding that the appellant was not entitled to Gratuity liability of Rs. 1,40,281/- u/s 28 read with Section 37 of the Act?"
2. "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the disallowance of Guarantee Commission payment of Rs. 19,991/- in connection with the purchase of machinery from foreign suppliers?"

The learned Counsel for the assessee points out that the question No.1 is squarely covered against the assessee by the ratio of the decision of the Supreme Court in Shree Sajjan Mills Vs. CIT, reported in 156 ITR 585, in which it was held that the right to receive the payment of gratuity accrues to the employee on his retirement or termination of service and the liability to pay gratuity becomes an accrued liability of the assessee when the employees retire or their services are terminated. Until then, the right to receive gratuity is a contingent right and the liability to pay gratuity continues to be a contingent liability qua the employer and such contingent liabilities do not constitute expenditure and cannot be the subject matter of deduction even under the mercantile system of accounting. Applying this decision, we hold that the Tribunal was justified in law in holding that the assessee was not entitled to the deduction of gratuity liability of Rs. 1,40,281/- under Section 28, read with Section 37 of the I.T Act. The question No.1 is therefore, answered in the affirmative against the assessee.

As regards the question No.2, it is pointed out by the learned Counsel for the assessee that the matter is covered against the assessee by the ratio of the decision of this Court in Vallabh Glass Works Ltd. Vs. CIT, reported in 137 ITR 389. Following that decision we hold that the Tribunal was justified in confirming the disallowance of guarantee commission payment of Rs. 19,991/- in connection with the purchase of machinery from foreign suppliers. The question No.2 is therefore, answered in the affirmative against the assessee. The reference stands disposed of accordingly.
